

68. (Thrice Amended) A device for breaking at least one tissue connection between the belly skin and the viscera of a slaughtered bird prior to evisceration of the carcass of the bird comprising:

a substantially elongated element having a free end for insertion under the skin of the belly of the bird;

a protection element for insertion into the bird through a hole in the skin, wherein the protection element comprises a stop face adapted for pushing away the viscera from the hole;

moving means for positioning the free end of the elongated element in the hole near the stop face and for rotating the elongated element about a substantially vertical axis for inserting the free end of the elongated element under the skin and for moving the free end of the elongated element away from the stop face.

REMARKS

This Amendment and Response amends claims 58, 62, 67, and 68. With this amendment, claims 58 and 60-75 are currently pending in the application. No fees are believed due for these amendments; however, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account 11-0855.

I. 35 U.S.C. § 102 Rejections

Claims 58, 60-65, and 67-75 were rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 4,418,445 to Meyn et al. (the "445 patent"). Applicants' assignee respectfully traverses these rejections and asks that they be withdrawn.

Independent method claim 58 has been amended to recite moving a separating means in a substantially horizontal plane. Independent device claim 62 has similarly been amended to recite separating means adapted to move in a substantially horizontal plane. Independent method claim 67 has been amended to recite rotating an elongated element about a substantially vertical axis. Independent device claim 68 has similarly been amended to recite moving means for rotating an elongated element about a substantially vertical axis. Movement of the recited separating means in a substantially horizontal plane and rotation of the recited elongated element about a substantially vertical axis are disclosed throughout the Application. *See, e.g.*, Application, p. 8, ll. 27-37 (disclosing horizontal translational movement); p. 19, ll. 36-39 (explaining that the supporting element can be moved about a substantially vertical axis (and therefore in a substantially horizontal plane) and “to and fro in the horizontal direction”); FIGS. 5d-5f. Through such movement, tissue connections between the belly skin and the viscera (such as, for example, but not limited to, between the skin and belly fat, between the belly fat and viscera, or within the belly fat) can be broken.

The Action analogizes the stretching member 21 with enlargement 24 of the ‘445 patent to the claimed separating means and elongated element. However, even assuming, *arguendo*, that the stretching member is properly analogized to the recited separating means or elongated element, the stretching member does not move in a substantially horizontal plane or rotate about a substantially vertical axis. Rather, the stretching member moves in the exact opposite manner to that recited in claims 58, 62, 67, and 68. The enlargement is inserted into the vent of the carcass and the entire stretching member 21 is then swung outwardly and upwardly in a substantially vertical plane and rotates about a substantially horizontal axis to lift and stretch the skin prior to cutting.

Nor would it have been obvious to move the member in a substantially horizontal plane or rotate the member about a substantially vertical axis as doing so would thwart the '445 patent's purpose of lifting the skin outwardly away from the underlying entrails to avoid damaging the entrails during cutting:

[a] stretching member [] is adapted to be inserted through the circular vent opening into the body cavity of the fowl and [] is subsequently moved outwardly to slide under the abdominal skin of the fowl and thus to stretch this skin outwardly away from the underling entrails and towards the cutting means. In this way the cutting means cannot damage the entrails while at the same time the stretched skin allows a sharp straight cut to be made therein.

'445 patent, col. 1, line 61 to col. 2, line 2. Movement of the stretching member in a substantially horizontal plane or rotation of the stretching member about a substantially vertical axis would actually be counterproductive as the skin would be pulled laterally outwardly (instead of upwardly outwardly), thereby drawing the skin tighter across the area of the intended cut and increasing the risk that damage will befall the entrails during cutting.

At least because the '445 patent fails to teach or suggest moving a separating means in a substantially horizontal plane or separating means adapted to move in a substantially horizontal plane, it fails to anticipate or render obvious claims 58 and 62. Accordingly, the rejection of claims 58 and 62 should be withdrawn, and these claims are allowable. At least because claims 60, 61, 70, and 73 depend from allowable claim 58 and claims 63-65, 71, and 74 depend from allowable claim 62, these claims are also allowable. Moreover, the '445 patent fails to teach or suggest rotating an elongated element about a substantially vertical axis and moving means for rotating an elongated element about a substantially vertical axis, and therefore it also fails to anticipate or render obvious claims 67 and 68. These claims are therefore allowable, as are claim 75 and claims 69 and 72, which depend from allowable claims 67 and 68, respectively.

Applicants' assignee renews its arguments set forth in its previously-filed August 15, 2002 Amendment and Response that the '445 patent does not teach a protection element, as recited in claims 67 and 68. However, in order to expedite allowance of these claims, claim 67 has further been amended to recite rotating the elongated element to move the free end of the elongated element away from the stop face of the protection element, and claim 68 has similarly been amended to recite moving means for rotating the elongated element for moving the free end of the elongated element away from the stop face. Movement of the free end of the elongated element away from the stop face is disclosed in the Application at page 16, line 28 to page 18, line 4 and in Figures 5c-5f.

The Action analogizes stretching member 21 to the elongated element and the area of member 21 near enlargement 24 to the recited free end of the elongated element. The Action maintains that groove 25 provided in enlargement 24 is the recited protection element and that enlargement 24 is the recited stop face of the protection element. Even assuming, *arguendo*, that the Action's analogies are proper (which Applicants' assignee believes they are not), the '445 patent fails to teach moving the area of member 21 near enlargement 24 (the alleged free end of the elongated element) away from enlargement 24 (the alleged stop face) of groove 25 (the alleged protection element), as recited in claims 67 and 68. In fact, movement of the alleged elongated element (including its free end) away from the alleged stop face of the protection element is impossible given that enlargement 24 and groove 25 are at least fixed to (and more likely integrally-formed with) element 21 so that these features move in unison and in the same direction with element 21, as clearly seen in FIG. 1. For this additional reason, the '445 patent fails to anticipate claims 67 and 68, as well as all claims depending from these allowable independent claims.

II. 35 U.S.C. § 103 Rejections

Claim 66 was rejected as being unpatentable over the '445 patent in view of U.S. Patent No. 4,059,868 to Meyn. Claim 66 ultimately depends from allowable claim 62 and is therefore allowable at least by virtue of its dependency on allowable claim 62.

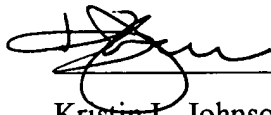
PETITION FOR THREE-MONTH TIME EXTENSION

Under 37 C.F.R. § 1.136(a) (1998), Applicants hereby petition that the period for responding to the Office Action mailed on September 5, 2002 be extended for three months, up to and including March 5, 2003. Enclosed is a check to cover the appropriate fee for this extension under 37 C.F.R. § 1.17. The undersigned attorney believes no further fees are due; however, the Commissioner is authorized to debit deposit account no. 11-0855 to the extent necessary if fees are due.

CONCLUSION

Applicants respectfully submit that claims 58 and 60-75 are in condition for immediate allowance, and request early notification to that effect.

Respectfully submitted,



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Marked-up copy of amended claims pursuant to 37 C.F.R. § 1.121(c)

Please amend claims 58, 62, 67, and 68 as follows:

58. (Thrice Amended) A method for processing a slaughtered bird suspended by its legs comprising breaking at least one tissue connection between the belly skin and the viscera of the bird prior to evisceration of the carcass of the bird, wherein the at least one tissue connection is broken at least partially by introducing separating means into the carcass of the bird through a hole in the skin and moving the separating means within the carcass in a [plane] substantially [parallel to the] horizontal plane [of the belly skin].

62. (Thrice Amended) A device for processing a slaughtered bird suspended by its legs prior to evisceration of the bird comprising separating means for breaking tissue connections between the belly skin and the viscera, wherein the separating means is adapted to move in a [plane] substantially [parallel to the] horizontal plane [of the belly skin].

67. (Thrice Amended) A method for breaking at least one tissue connection between the belly skin and the viscera of a slaughtered bird prior to evisceration of the carcass of the bird comprising inserting a substantially elongated element with a free end under the skin of the belly of the slaughtered bird which is provided with a hole in the skin, wherein inserting the elongated element comprises:

inserting a protection element through the hole and into the bird, wherein the protection element comprises a stop face adapted for pushing away the viscera from the hole;

positioning the free end of the elongated element in the hole near the stop face;

and

rotating the elongated element about a substantially vertical axis to insert the free end of the elongated element under the skin and to move the free end of the elongated element away from the stop face.

68. (Thrice Amended) A device for [processing a slaughtered bird] breaking at least one tissue connection between the belly skin and the viscera of a slaughtered bird prior to evisceration of the carcass of the bird comprising:

a substantially elongated element having a free end for insertion under the skin of the belly of the bird;

a protection element for insertion into the bird through a hole in the skin, wherein the protection element comprises a stop face adapted for pushing away the viscera from the hole;

moving means for positioning the free end of the elongated element in the hole near the stop face and for rotating the elongated element about a substantially vertical axis for inserting the free end of the elongated element under the skin and for moving the free end of the elongated element away from the stop face.